

REMARKS

Claims 1-3, 5-6, 8, 17-22 and 30-50 are now pending in the application. Applicant acknowledges the allowable subject matter of Claims 17-22. However, the Examiner is respectfully requested to reconsider and withdraw the remaining rejections in view of the amendments and remarks contained herein.

REJECTION UNDER 35 U.S.C. § 112

The Examiner has rejected Claim 1 under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. This rejection is respectfully traversed. Applicant has made a minor amendment to clarify the scope of this claim. Therefore, reconsideration and withdrawal of this rejection is respectfully requested.

REJECTION UNDER 35 U.S.C. § 103

Claims 1-3, 5-6, 8-10, 25-26, and 28-29 stand rejected under 35 U.S.C. §103(b) as being unpatentable over U.S. Patent No. 5,446,809 (Fritz) in view of U.S. Patent No. 6,446,341 (Lumish).

In order to expedite prosecution of this application, independent Claim 1 has been amended to incorporate the limitations of objected to Claim 10. Accordingly, applicants respectfully requests the Examiner to reconsider and withdraw this rejection.

Claims 30-42 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Fritz in view of Lumish and in further view of applicant's admitted prior art. This rejection is respectfully traversed.

Claims 30 and 31 are directed generally to an architectural arrangement for a cross-connect switch that supports optical multiplexed signals having different bit rates. Contrary to the Examiner's assertion, Applicant respectfully submits that the Examiner has failed to establish a prima facie case of obviousness in this case. When formulating obviousness rejections, certain tenets of patent law must be adhered to, including the references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination; and the references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention. MPEP §2141.01.

First, the Examiner states that filters operable to partition an optical band into optical sub-band signals at different bit rates are well known in the art as admitted by the applicant. However, the Examiner has ignored the teachings of the reference as a whole. To the extent that the Examiner relies upon the present application as a reference, this reference further teaches that conventional cross-connect switches operate on a single bit rate (e.g., see [0003] of the specification). Therefore, this reference as a whole teaches away from using these types of filters in the context of a cross-connect switch.

Since neither of the relied upon references suggest or provide motivation to combine the references, the Examiner appears to be relying upon the knowledge

generally available to one of ordinary skilled in the art without support of documentary evidence. Any rejection based on assertions that a fact is common knowledge in the art without documentary evidence should be judiciously applied. MPEP §2144.03. As set forth in MPEP §2145(X)(C), the Federal Circuit has produced a number of decisions overturning obviousness rejections due to a lack of suggestion in the prior art of the desirability of combining references.

Finally, the combination of prior art references must teach or suggest all of the claim limitations. In this case, neither Fritz nor Lumish disclose a cross-connect switch that supports optical multiplexed signals having different bit rates. Thus, it is unclear as to how filters would be incorporated into the teachings of these references to achieve this feature. Of course, it would be improper hindsight reasoning to rely upon the teachings of the present application. Therefore, Applicant further asserts that this combination of references fails to teach or suggest all of the claim limitations of Applicant's claimed invention.

For at least these reasons, Applicant respectfully submits that the Examiner has failed to establish a prima facie case of obviousness. Accordingly, Applicant request the Examiner to reconsider and withdraw this rejection.

Claims 43-50 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Fritz in view of Lumish and applicant's admitted prior art and in further view of U.S. Patent No. 5,771,112 (Hamel). This rejection is respectfully traversed.

For the same reasons as described above, Applicant respectfully submits that the Examiner has failed to establish a prima facie case of obviousness. Accordingly, Applicant requests the Examiner to reconsider and withdraw this rejection.

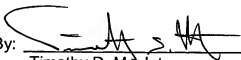
CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested.

If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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